

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

NEW YORK STATE TEAMSTERS,

Plaintiff,

Civ. Action No.
5:04-CV-0847 (NPM/DEP)

vs.

SYRACUSE MOVERS, INC.,

Defendant.

NEW YORK STATE TEAMSTERS
CONFERENCE PENSION & RETIREMENT
FUND,

Plaintiff,

Civ. Action No.
5:05-CV-0060 (NAM/DEP)

vs.

SYRACUSE MOVERS, INC.

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

PARAVATI, KARL LAW FIRM
12 Steuben Park
Utica, New York 13501

GERALD J. GREEN, ESQ.
VINCENT M. DeBELLA, ESQ.

FOR DEFENDANT:

PRIMO, PRIMO LAW FIRM
7075 Manlius Center Road
East Syracuse, New York 13057

ROBERT A. FEINBERG, ESQ.
TERRY J. KIRWAN, JR., ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

REPORT, RECOMMENDATION AND ORDER

On December 21, 2005 I issued an order in these two separate but related cases directing Thomas Towey, a principal in defendant Syracuse Movers, Inc., to appear for deposition. That order followed intensive efforts by the court to convince the defendant and its counsel to cooperate in pretrial discovery, including to arrange for Mr. Towey to appear for the requested deposition.

During a digitally recorded conference conducted by telephone on February 15, 2006, defendant's counsel confirmed that Mr. Towey had failed to appear for deposition as directed in my order and further advised the court that he would not participate in any deposition in the cases. Based upon those circumstances, I issued a bench ruling indicating that I would recommend that the answer of Syracuse Movers, Inc. in each of these two actions be stricken and that the defendant's default be entered in both cases, pursuant to Rule 37(b)(2)(C), and explained my reasoning

for making that recommendation. Based upon the court's bench decision, which is incorporated herein by reference, it is hereby

ORDERED, as follows:

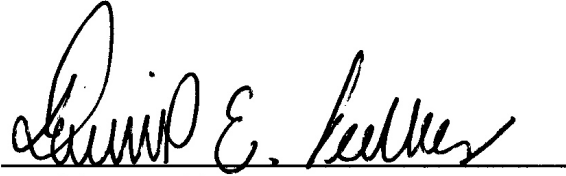
1) Consistent with this court's normal practice, the second of these two separate but related actions, Civil Action No. 5:05-CV-0060, is hereby reassigned to Senior District Judge Neal P. McCurn, to whom the first filed action was assigned, and the Clerk is directed to adjust its records to reflect this reassignment.

2) It is hereby RECOMMENDED that the answer in each of these two cases by Syracuse Movers, Inc. be STRICKEN, and that defendant's default be entered, with a directive that plaintiff file a motion for default judgment within thirty (30) days after entry of an order by the assigned district judge implementing this recommendation.

3) The Clerk is directed to promptly forward copies of this order and recommendation to counsel for the parties by electronic means.

NOTICE: Pursuant to 28 U.S.C. § 636(b)(1), the parties may lodge written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court within TEN days. FAILURE TO SO OBJECT TO THIS REPORT WILL PRECLUDE APPELLATE REVIEW. 28 U.S.C.

§ 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72; Roldan v. Racette, 984 F.2d 85 (2d Cir. 1993).

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge

Dated: February 16, 2006
Syracuse, NY